

1990, 15 minutes prior to the display. It terminates upon completion of the display at approximately 9:10 p.m., August 26, 1990, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, Long Island Sound, Port Operations duty watchstander at (203) 468-4464.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after *Federal Register* publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect any marine traffic from the potential hazards involved.

Drafting Information

The drafters of this regulation are BMC Cassin, project officer, Captain of the Port, Long Island Sound, and LT Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at 8:45 p.m. on August 26, 1990. It is the launching of approximately 500 lbs. of fireworks in Norwich Harbor, Norwich, CT. This Safety Zone is needed to protect any transiting commercial or recreational marine traffic from the possible hazards associated with the fireworks display in the channel area.

This regulation is issued pursuant to U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new 33 CFR 165.T1112 is added to read as follows:

§ 165.T1112 Safety Zone: Norwich Tenth Annual Harbor Day.

(a) *Location.* The following area is a safety zone: All waters within a 575 ft radius of the "American Wharf Barge"

(the fireworks launching platform at approximate positions 41°31'35" N, 072°04'53" W). The safety zone will be closed to all marine traffic from 8:30 p.m. until the completion of the display at approximately 9:10 p.m. on August 26, 1990.

(b) *Effective date.* This regulation becomes effective on August 26, 1990 at 8:30 p.m. It terminates upon completion of the display at approximately 9:10 p.m. August 26, 1990, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or his on scene representatives.

Dated: July 17, 1990.

T.H. Collins,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 90-18186 Filed 8-2-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AD99

Definition of Marginal Employment in Consideration of Total Evaluations Based on Individual Unemployability

AGENCY: Department of Veterans Affairs.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs (VA) has amended the Schedule for Rating Disabilities to define marginal employment in consideration of total disability ratings based on unemployability of an individual. This amendment was necessary to respond to a General Accounting Office (GAO) study on this subject. The intended effect is to promote consistency in making determinations of marginal employment.

EFFECTIVE DATE: This amendment is effective September 4, 1990.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend § 4.16(a) on pages 35507-35508 of the *Federal Register* of August 28, 1989. A correction was published on page 37698 of the *Federal Register* of September 12, 1989. Interested persons were invited to

submit comments, suggestions, or objections by September 27, 1989. Three comments were received.

One commenter stated that the proposed definition provides inadequate guidelines and would fail to establish the intended effect. The commenter points out that the GAO study revealed that many veterans with earnings are not reporting such earnings to VA as required and asks how establishing an earned income limit will resolve that problem.

VA does not concur. GAO's recommendation that VA define marginal employment was not intended to resolve the problem of veterans' non-reporting of earned income.

The same commenter questions how VA proposes to apply the earned income limit, the poverty threshold established by the Bureau of the Census each March for the preceding year, and suggests that if an earnings limit must be set, it should be as economically current as possible (e.g., a percentage of the current minimum wage).

VA proposes that the poverty threshold be applied for the period from the date of its establishment until a new threshold is established the following year, even though such thresholds are for the preceding years. VA does not concur with using a percentage of the minimum wage as that is an hourly figure and VA is considering income for a 12 month period. Income for such a period based on the minimum wage would depend on the number of hours worked.

That commenter further stated the ability or inability to earn, rather than the earnings themselves, must be the determining factor when considering entitlement to individual unemployability.

VA concurs. Earned income as the criteria for defining marginal employment is not intended to be the determining factor when considering entitlement to individual unemployability. It is merely intended to define marginal employment which VA policy has long considered not to be substantially gainful employment.

The same commenter also suggested that the term "neuropsychiatric" in § 4.16(a) should be changed to "neurological" for the same reasons set forth as the basis for prior amendments of §§ 4.16 and 4.130 regarding individual unemployability and mental disorders.

VA does not concur. The term "neuropsychiatric" is acceptable and understood as used. Furthermore, the prior amendments to which the commenter referred do not support the suggested change in terminology.

Another commenter noted that the Schedule for Rating Disabilities already contains a definition of marginal employment in § 4.17(a) pertaining to claims for nonservice-connected pension. The commenter stated that the proposed rule would require veterans who are supporting families to seek and pursue part-time sedentary employment which would remunerate them at or below the poverty level of a single person. The commenter suggested that the current definition in § 4.17(a) be adopted when considering total evaluations based on individual unemployability in compensation claims.

VA does not concur. The proposed rule would not require any veteran to seek and pursue employment which would remunerate them at or below the poverty level. Furthermore, pension is based on need with need determined by income. The determining factor for compensation based on individual unemployability is not income, but whether a veteran is unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities. The income criteria as a definition of marginal employment is intended to establish consistency in decisions as to whether a veteran's employment constitutes a substantially gainful occupation.

A third comment suggested that VA define what factors would warrant a decision that marginal employment may be held to exist when earned income exceeds the poverty threshold. VA concurs and has revised the proposed regulation to include examples.

VA reviewed Office of Workers' Compensation Programs and Social Security Administration regulations (20 CFR parts 10 and 404, respectively) and found no reference to the term "marginal employment" or anything akin thereto.

The weighted average poverty threshold in 1988 for one person (unrelated individual), as established by the Bureau of the Census, was \$6,024. VA will publish subsequent poverty threshold figures as notices in the *Federal Register*.

We appreciate the comments and suggestions submitted in response to the proposed rule which is adopted with the revision noted above.

The Secretary hereby certifies that this regulatory amendment will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to

5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, VA has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of \$100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic assistance program number is 64.109)

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: July 10, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 4—[AMENDED]

In 38 CFR part 4, Schedule for Rating Disabilities, § 4.16 is amended by adding the following five sentences to paragraph (a) to read:

§ 4.16 Total disability ratings for compensation based on unemployability of the individual.

(a) * * *

It is provided further that the existence or degree of nonservice-connected disabilities or previous unemployability status will be disregarded where the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable. Marginal employment shall not be considered substantially gainful employment. For purposes of this section, marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the U.S. Department of Commerce, Bureau of the Census, as the poverty threshold for one person. Marginal employment may also be held to exist, on a facts found basis (includes but is not limited to employment in a protected environment such as a family business or sheltered workshop), when earned annual income exceeds the poverty threshold. Consideration shall be given in all claims to the nature of the

employment and the reason for termination.

(Authority: 38 U.S.C. 210(c))

* * *

[FR Doc. 90-18132 Filed 8-2-90; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900-AD85

Veterans Education; The Veterans' Benefits and Programs Improvement Act of 1988 and VEAP

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Final regulations.

SUMMARY: The Veterans' Benefits and Programs Improvement Act of 1988 contains several provisions which affect the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). These include permitting cooperative training in this program, permitting refresher, remedial and deficiency training in this program, providing tutorial assistance to veterans in this program, liberalizing the standards for determining extensions to a veteran's basic period of eligibility, and reducing benefits to veterans who are incarcerated by reason of a felony conviction. Some of these changes are liberalizing. Some are more restrictive. This will acquaint the public with the way in which the Department of Veterans Affairs will administer the new provisions of law.

EFFECTIVE DATES: New regulations §§ 21.5021 (r) and (s) and 21.5230 (a) and (b) are effective September 4, 1990. The effective dates of the remainder of the amendments coincide with the effective dates of the sections of the law upon which they are based. Consequently, §§ 21.5042, 21.5072(a), 21.5130, 21.5131 and 21.5296, and new regulations §§ 21.5021 (t), (u) and (v), 21.5072 (f) and (g), 21.5139 and 21.5141 are retroactively effective on November 18, 1988. Furthermore, new regulation § 21.5230(c) is effective on August 15, 1989, and all other amendments are retroactively effective on January 1, 1989.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 48641 through 48645 of the Federal Register of November 24, 1989, there was published notice of intent to amend 38 CFR part 21 in order to implement the provisions of the Veterans' Benefits and Programs Improvement Act of 1988 (Pub. L. 100-689) which affect VEAP. Interested people were given 32 days to submit comments, suggestions or objections. VA and Department of Defense received one letter from a legal foundation.

The letter generally supported the proposal. In particular, the letter supported the amendments to § 21.5042 concerning the extension to the eligibility period due to a veteran's disability. The foundation also supported the policy behind the new regulation, § 21.5139, which would require a reduction in benefits to veterans incarcerated following conviction of a felony. However, the foundation believes that § 21.5139 does not go far enough. The letter suggested terminating eligibility for VEAP benefits for veterans convicted of violent felonies such as robbery, rape or drug dealing.

The Department of Veterans Affairs and the Department of Defense have carefully considered this suggestion, but have decided not to adopt it.

The law upon which § 21.5139 is based is found at 38 U.S.C. 1631(e) as added by Public Law 100-689. This provision of law explicitly authorizes payment of educational assistance to veterans incarcerated in a Federal, State or local penal institution for conviction of a felony, but limits the amount of the payment as provided therein. The provision applies to all such incarcerated felons without distinguishing the nature of the felony for which the veteran was convicted. In order for VA and Department of Defense to draw such a distinction and entirely deny benefits to certain categories of felons during and after their incarceration, the law would have to be amended. Therefore, VA and the Department of Defense are making proposed regulations final without change.

The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the amendments to §§ 21.5042, 21.5072(a), 21.5130, 21.5131 and 21.5296, and the new regulations §§ 21.5021 (t), (u) and (v), 21.5072 (f) and (g), 21.5139, and 21.5141, like the sections of Public Law 100-689 they implement, retroactively effective on November 18, 1988. The Department of Veterans Affairs and the Department of Defense find that good cause exists for making new regulation

§ 21.5230(c), like the section of law it implements, effective on August 15, 1989. The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the remainder of the regulations (other than new regulations § 21.5021 (r) and (s) and § 21.5230 (a) and (b)) retroactively effective on January 1, 1989. To achieve the maximum benefit of the legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial or improper payment of a benefit to a veteran or servicemember. Moreover, the above sections simply interpret and implement statutory provisions.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense certify that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 7, 1990.

Edward J. Derwinski,
Secretary of Veterans Affairs.

Approved: June 25, 1990.

Donald W. Jones,
Lieutenant General, USA Deputy Assistant
Secretary of Defense (Military Manpower and
Personnel Policy).

38 CFR part 21, Vocational
Rehabilitation and Education, is
amended as follows:

PART 21—[AMENDED]

1. In § 21.5021, paragraphs (r) through (v) are added to read as follows:

§ 21.5021 Definitions.

(r) *Educational objective*—An educational objective is one that leads to the awarding of a diploma, degree or certificate which is generally recognized as reflecting educational attainment.

(Authority: 38 U.S.C. 1602(2), 1652(b))

(s) *Professional or vocational objective*—A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program of education consists of a series of courses not leading to an educational objective, these courses must be generally accepted as necessary for attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 1602(2))

(t) *Deficiency course*—The term "deficiency course" means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(Authority: 38 U.S.C. 1641; Pub. L. 100-689)

(u) *Refresher course*—The term "refresher course" means—

(1) Either a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed, or

(2) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U.S.C. 1641(a); Pub. L. 100-689)

(v) *Disabling effects of chronic alcoholism*. (1) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental

disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case—

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 1632, 1662; Pub. L. 100-689)

2. In § 21.5042, paragraphs (c) (1) and (2) are redesignated as paragraphs (c) (3) and (4) respectively; paragraph (a)(2) is revised and paragraphs (c) (1) and (2) and (d)(4) are added so that revised and added text reads as follows:

§ 21.5042 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. See § 21.5021(v).

(Authority: 38 U.S.C. 105, 1632, 1662; Pub. L. 99-576, Pub. L. 100-689)

* * *

(c) *Qualifying period of disability.* (1) A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education.

(2) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct provided the last date of the time limit for filing a claim for the extension determined under § 21.5030(c)(3) of this part occurs after November 17, 1988.

(Authority: 38 U.S.C. 105; Pub. L. 100-689)

* * *

(d) *Commencing date.* * * *

(4) For a veteran whose entitlement to an extended period of eligibility is dependent upon the disabling effects of chronic alcoholism, may not begin before November 18, 1988.

(Authority: 38 U.S.C. 105, 1632; Pub. 99-576, Pub. L. 100-689)

3. In § 21.5072, paragraph (a) heading and paragraph (a)(1) are revised and paragraphs (e), (f), and (g) are added to read as follows:

§ 21.5072 Entitlement charge.

(a) *General.* (1) Except as provided in paragraphs (b) through (g) of this section, VA will make a charge against the period of entitlement as follows:

* * *

(e) *Cooperative training.* VA will make a charge against entitlement of 80 percent of a month for each month for which a veteran is paid educational assistance allowance at the cooperative training rate as provided in § 21.5138(a). If the veteran is paid for a partial month of training, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 1631(d); Pub. L. 100-689)

(f) *Training while the veteran is incarcerated.* If the veteran must be paid educational assistance allowance at a reduced rate because he or she is incarcerated as provided in § 21.5139 of this part, VA will make a charge against entitlement of one month for each amount of educational assistance allowance paid to the veteran which is the equivalent of one month's benefits as provided in § 21.5138 of this part for the appropriate type of training pursued.

(Authority: 38 U.S.C. 1631(e); Pub. L. 100-689)

(g) *Tutorial assistance.* If an individual is paid tutorial assistance as provided in § 21.5141 of this part, the following provisions will apply.

(1) There will be no charge to entitlement for the first \$600 of tutorial assistance paid to an individual.

(2) VA will make a charge against the period of entitlement for each amount of tutorial assistance paid to the individual in excess of \$600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in § 21.5138(c) of this part. When the amount of tutorial assistance paid to the individual in excess of \$600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 1634; Pub. L. 100-689)

4. In § 21.5130, paragraphs (a) and (d) are revised to read as follows:

§ 21.5130 Payments—educational assistance allowance.

* * *

(a) Section 21.4131 (except paragraph (e))—Commencing dates.

(Authority: 38 U.S.C. 1641)

* * *

(d) Section 21.4135 (except paragraphs (b), (c), (d), (o), and (v))—Discontinuance dates.

(Authority: 38 U.S.C. 1641)

* * *

5. Section 21.5131 is revised to read as follows:

§ 21.5131 Educational assistance allowance.

VA will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 of this part while the individual is pursuing either an approved program of education or a refresher or deficiency course or other preparatory or special education or training which is necessary to enable the individual to pursue an approved program of education. VA will make no payment for pursuit of any course which either is not part of the veteran's program of education, or is not a refresher, deficiency or other preparatory or special education or training course which is necessary to enable the individual to pursue an approved program of education. VA may withhold final payment until it receives proof of the individual's account.

(Authority: 38 U.S.C. 1641; Pub. L. 94-502, 99-576, 100-689)

6. In § 21.5132, paragraph (a) is revised to read as follows:

§ 21.5132 Criteria used in determining benefit payments.

(a) *Training time.* The amount of benefit payment to an individual in all types of training except cooperative training, correspondence training and apprenticeship and other on-job training depends on whether VA determines that the individual is a full-time student, three-quarter-time student, half-time student or one-quarter-time student.

(Authority: 38 U.S.C. 1641, 1788; Pub. L. 99-576, Pub. L. 100-689)

* * *

7. In § 21.5138 paragraph (a)(4) is added to read as follows:

§ 21.5138 Computation of benefit payments and monthly rates.

* * *

(a) * * *

(4) For cooperative training VA will compute the entitlement factor as follows:

- (i) Enter the number of full months in the applicable benefit period. (1) _____
- (ii) Enter the number of full days in excess of the number of full months. (a) _____
- (iii) Divide line a by 30. Enter the quotient. (2) _____
- (iv) Total lines 1 and 2..... (3) _____
- (v) Multiply line 3 by .80. Enter the result. (4) _____

(This is the entitlement factor.)

(Authority: 38 U.S.C. 1631; Pub. L. 100-689)

8. Sections 21.5139 and 21.5141 are added to read as follows:

§ 21.5139 Computation of benefit payments for incarcerated individuals.

Notwithstanding the provisions of § 21.5138, some incarcerated individuals may have their educational assistance allowance terminated or reduced. The provisions of this section shall not apply in the case of any individual who is pursuing a program of education while residing in a halfway house or participating in a work-release program in connection with that individual's conviction of a felony.

(a) *No educational assistance allowance payable to some incarcerated individuals.* VA will pay no educational assistance allowance to an individual who—

- (1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and
- (2) Is enrolled in a course where his or her tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and
- (3) Has incurred no expenses for supplies, books or equipment.

(Authority: 38 U.S.C. 1631(e))

(b) *Reduced educational assistance allowance for some incarcerated individuals.* (1) VA will pay a reduced educational assistance allowance to a veteran who—

- (i) Is incarcerated in a Federal, State or local penal institution of conviction of a felony, and
- (ii) Is enrolled in a course—
 - (A) For which the individual pays some (but not all) of the charges for tuition and fees, or
 - (B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the individual to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance allowance payable to such an individual shall be the lesser of the following:

- (i) The monthly rate determined by adding the tuition and fees that the veteran must pay and the charge to the veteran for the cost of necessary supplies, books and equipment and prorating the total on a monthly basis, or
- (ii) The monthly rate for the individual as determined by § 21.5138(c) of this part.

(Authority: 38 U.S.C. 1631(e))

§ 21.5141 Tutorial assistance.

(a) *Entitlement to tutorial assistance.*

(1) An individual who is otherwise eligible to receive benefits under the Post-Vietnam Era Veterans' Educational Assistance Program may receive supplemental monetary assistance to provide tutorial services if he or she—

- (i) Is pursuing a post-secondary educational program on a half-time or greater basis at an educational institution, and
- (ii) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.

(2) This supplemental monetary assistance shall be termed tutorial assistance.

(Authority: 38 U.S.C. 1634, 1692; Pub. L. 100-689)

(b) *Application for tutorial assistance.* The application for tutorial assistance shall be in the form prescribed by the Secretary and shall contain such information as the Secretary may require.

(Authority: 38 U.S.C. 1634, 3001; Pub. L. 100-689)

(c) *Approval of tutorial assistance.*

The Department of Veterans Affairs will approve an application for tutorial assistance when—

- (1) The educational institution where the individual is pursuing a program of education certifies that—
 - (i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;
 - (ii) The tutor selected—
 - (A) Is qualified, and
 - (B) Is not the parent, spouse, child, brother or sister of the individual; and
 - (iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis.

(Authority: 38 U.S.C. 1634, 1692; Pub. L. 100-689)

(d) *Limitations on tutorial assistance.*

(1) The Department of Veterans Affairs will authorize tutorial assistance in an amount not to exceed \$100 per month.

(2) Tutorial assistance provided under this section will not exceed a maximum of \$1,200.

(Authority: 38 U.S.C. 1634, 1692; Pub. L. 100-689)

9. Section § 21.5230 is revised to read as follows:

§ 21.5230 Programs of education.

(a) *Approving the selected program of education.* Except as provided in paragraphs (b) and (c) of this section, VA will approve a program of education under chapter 32, title 38, United States Code, only if it—

- (1) Meets the definition of a program of education stated in § 21.5021(q) of this part;
- (2) Has an objective as described in § 21.5021 (r) or (s) of this part;
- (3) The courses or subjects in the program are approved for VA training; and
- (4) The veteran or serviceperson is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 1602(2))

(b) *Programs which include secondary school training.* VA may approve the enrollment of a veteran or serviceperson in a refresher, remedial, deficiency or other preparatory or special educational assistance course when the veteran or eligible serviceperson needs the course in order to pursue an approved program of education.

(Authority: 38 U.S.C. 1641(a)(2))

(c) *Refresher training for those already qualified.* The refresher training referred to in paragraph (b) of this section includes training in a course or courses for which the veteran is already qualified provided the course or courses permit the veteran to update knowledge and skills or to be instructed in the technological advances which have occurred in the veteran's field of employment. The relevant field of employment may have been pursued either before, during or after the veteran's active duty.

(Authority: 38 U.S.C. 1641(a)(2); Pub. L. 100-689)

10. In § 21.5250, paragraphs (h) through (n) are revised and paragraph (o) is added to read as follows:

§ 21.5250 Courses.

(h) Section 21.4257—Cooperative courses.

(Authority: 38 U.S.C. 1602(2); Pub. L. 100-689)

(i) Section 21.4258—Notice of approval.

(Authority: 38 U.S.C. 1641, 1778; Pub. L. 94-502, Pub. L. 99-576)

(j) Section 21.4259—Suspension or disapproval.

(Authority: 38 U.S.C. 1641, 1779; Pub. L. 94-502)

(k) Section 21.4260—Courses in foreign countries.

(Authority: 38 U.S.C. 1641, 1676; Pub. L. 94-502)

(l) Section 21.4261—Apprentice courses.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(m) Section 21.4262—Other training on-the-job courses.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99-576)

(n) Section 21.4265 (except paragraph (g))—Practical training approved as institutional training.

(Authority: 38 U.S.C. 1641, 1772; Pub. L. 94-502)

(o) Section 21.4266—Courses offered at subsidiary branches or extensions.

(Authority: 38 U.S.C. 1641, 1772, 1789(c); Pub. L. 94-502)

11. In § 21.5270, paragraph (a) is revised to read as follows:

§ 21.5270 Assessment and pursuit of course.

(a) Section 21.4270 (except those portions of the paragraph and footnotes dealing with farm cooperative training)—Measurement of courses. For the purpose of benefits payable under chapter 32 that training identified in § 21.4270 of this part as less than one-half and more than one-quarter time will be treated as one-quarter-time training.

(Authority: 38 U.S.C. 1641, 1788; Pub. L. 94-502, Pub. L. 99-576, Pub. L. 100-689)

12. In § 21.5296, paragraphs (a)(2) and (c) introductory text are revised to read as follows:

§ 21.5296 Extended period of eligibility.

(a) * * *

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful

misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 1632; Pub. L. 99-576, Pub. L. 100-689)

(c) *Qualifying period of disability.* A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 1632; Pub. L. 99-576, Pub. L. 100-689)

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[FRL-3812-2]

Approval and Promulgation of Air Quality Implementation Plans; State of Texas; Control of Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision that is applicable only in the Dallas/Fort Worth (D/FW) area, and includes rules which were submitted by the State of Texas. The rules will reduce emissions of volatile organic compounds (VOCs) from gasoline by reducing its Reid Vapor Pressure (RVP). EPA is also finding that Texas' rules are "necessary to achieve" the National Ambient Air Quality Standard (NAAQS) for ozone, and are excepted from Federal preemption under section 211(c)(4)(C) of the Clean Air Act (the Act). The intended effect of this action is to make reasonable further progress towards attainment of the ozone standard in the D/FW area as expeditiously as practicable, as required under the Act.

DATES: This action will be effective September 4, 1990.

ADDRESSES: Copies of the State's submittal and other relevant documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Planning Section (6T-AP), 1445 Ross Avenue, Dallas, Texas 75202.
Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Becky Caldwell at (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION:**Introduction**

This notice describes EPA's decision to approve revisions to the Texas SIP which limit the volatility of gasoline in the D/FW area from May 1 to September 16 beginning in 1990. The remainder of this preamble is divided into three sections. The first provides the background for this action, with respect to both chronology and the broad issues involved. The second section presents today's action and EPA's rationale. The third section summarizes the comments received on the proposed action and EPA's responses to them.

Background

The Texas Air Control Board (TACB) considered RVP control during the development of its Interim Post-82 SIP for the D/FW non-attainment area. This SIP was developed in 1987, and submitted on December 21, 1987. This Interim Post-82 and the initial Post-82 SIP are described in greater detail in EPA's February 9, 1989, *Federal Register* (54 FR 8302). When the Interim SIP was submitted, EPA had proposed to control RVP, but had not issued a final rule. In the Interim SIP, Texas made a commitment to control RVP in the D/FW area, if EPA failed to take final action. In addition, the TACB based its demonstration of attainment on a 9.0 pounds per square inch (psi) RVP standard in the D/FW area. When EPA issued its final rule, the RVP standard in the D/FW area was set at 9.5 psi for the period June 1 through September 15 and at 10.5 psi for May. This compromised the demonstration of attainment, and provided the impetus for TACB to develop a 9.0 psi RVP rule.

The TACB began development of the RVP rules in mid-1989, and held four public hearings on the proposed rules in August 1989. On December 8, 1989, the Texas Air Control Board (TACB) adopted the final RVP rules by adding a new subchapter to TACB Regulation V, (31 TAC 115.242-115.249). The rules require that no person shall place, store, or hold in any stationary tank, reservoir, or other container any gasoline with an RVP greater than 9.0 psi. The rules also require that no person shall transfer or allow the transfer of gasoline having an